

LOF Glass, Inc. and United Glass and Ceramic Workers of North America, AFL-CIO-CLC.
Cases 11-CA-9204 and 11-RC-4751

August 25, 1981

**DECISION, ORDER, AND
CERTIFICATION OF RESULTS OF
ELECTION**

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On February 27, 1981, Administrative Law Judge William N. Cates issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

The Objections in Case 11-RC-4751

Inasmuch as we have adopted the Administrative Law Judge's overruling of Petitioner's Objections 1, 2, 3, 4, 5, and 6(a) and as all of the remaining objections to the third representation election of this proceeding have been previously overruled, we shall certify the results of the election.

**CERTIFICATION OF RESULTS OF
ELECTION**

It is hereby certified that a majority of the valid ballots have not been cast for United Glass and Ceramic Workers of North America, AFL-CIO-CLC, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section

¹ The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

9(a) of the National Labor Relations Act, as amended.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge: This matter was heard before me in Laurinburg, North Carolina, on January 14, 1981. The charge in this case was filed by United Glass and Ceramic Workers of North America, AFL-CIO-CLC, hereinafter the Union or the Charging Party, on June 10, 1980. The complaint and notice of hearing was issued by the Regional Director for Region 11 of the National Labor Relations Board, hereinafter the Board, alleging that LOF Glass, Inc., hereinafter Respondent or the Employer, had violated Section 8(a)(1) of the National Labor Relations Act, as amended, hereinafter the Act, by various acts of interference, restraint, and coercion of its employees by its supervisors and agents. By telegraphic order dated January 9, 1981, the Board ordered consolidated for hearing with the complaint herein Objections 1-6(a), inclusive, of objections previously filed by the Union inasmuch as the specified objections are also the subject of the unfair labor practice allegations herein. Respondent filed a timely answer to the complaint and notice of hearing in which it denied having violated the Act.

All parties appeared at the hearing and were afforded full opportunity to present oral and written evidence and to examine and cross-examine witnesses. Upon the entire record, together with careful observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation licensed to do business in the State of North Carolina, with an office, plant, and place of business located in Laurinburg, North Carolina, where it is engaged in the manufacture of glass products. During the 12-month period preceding issuance of the complaint herein, Respondent sold and shipped finished products valued in excess of \$50,000 directly to customers located outside the State of North Carolina. During the same representative period of time, Respondent received at its Laurinburg, North Carolina, plant goods and raw materials directly from points outside the State of North Carolina valued in excess of \$50,000. The complaint alleges, Respondent admits, and I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

There have been union activity and campaigns at Respondent's North Carolina location at least since 1979. A secret-ballot election was conducted at Respondent's plant under the supervision of the Regional Director for Region 11 on October 10, 1979. Upon objections filed by the Union to conduct affecting the results of the election, a second election at Respondent was ordered, and subsequently held on November 5 and 6, 1980. Timely objections to the conduct affecting the results of that election were also filed, of which Objections 1-6(a) are consolidated with the hearing herein.

The allegations of the complaint herein grew out of new employee orientation meetings which were held at Respondent's location between March 17 and 22, 1980. Further allegations of the complaint arose from an employee/applicant job interview conducted by Respondent in April 1980.

The General Counsel, in his complaint, attributes unlawful conduct to Personnel Manager Hewitt Fulton and Assistant Personnel Manager James Stewart. The complaint alleged, Respondent admitted, and I find both of the named individuals were agents of Respondent and were supervisors within the meaning of the Act at the time when they were alleged to have engaged in the conduct described in the complaint. The specific complaint allegations are summarized and discussed below.

B. The Alleged Violations Attributed to Personnel Manager Fulton

The General Counsel at complaint paragraphs 8(a), (b), and (d)¹ alleged that Respondent through Fulton threatened employees that, if the plant were unionized, the Union would take away the rights of employees; interrogated employees regarding their union sentiments; and threatened employees that unionization would result in layoffs and strikes. The above-referenced subparagraphs of the complaint indicate the alleged misconduct of Respondent took place on March 19, 1980.²

Counsel for the General Counsel relies on the testimony of employees Annie V. Bethea and Velois Gions to establish the violations alleged in paragraphs 8(a), (b), and (d). As each allegation was alleged to have taken place in a very limited time frame the same morning, I am considering the testimony of Bethea and Gions without further dividing or separating it with respect to either threats, interrogation, or the like.

Both employees Bethea and Gions testified that they commenced their employment with Respondent on March 17, 1980, and spent the week of March 17-20 in orientation training with approximately 30 to 35 other employees.

Bethea testified that on Wednesday morning, March 19, 1980, Personnel Manager Fulton spoke to the assem-

bled new employees regarding insurance policies of Respondent, and then read to the employees from Respondent's employee handbook. Each of the employees attending orientation had been given a copy of the handbook from which Fulton read. Bethea stated that Personnel Manager Fulton specifically read to the group "Our Employee Relationship Philosophy" as contained on page 3 of the handbook and then talked about the Union. Bethea testified that Fulton asked how many in the meeting had belonged to a union before. Bethea stated there could have been some hands raised but, as she was sitting near the front of the room, she was unable to observe what the other employees may have done. Bethea further testified that Personnel Manager Fulton stated: "... like, if the Union comes in that we would have no more open door policy and that we wouldn't be able to speak for ourselves because they would always have someone to speak for us and we would not be able to take our grievance to our foreman or anything like that and that if the Union comes in, we would have no more open door policy."

Bethea testified that Personnel Manager Fulton then told the employees their homes were their private property, and he knew of a case where one union organizer went to a man's house and the home owner put a gun in the organizer's face and ran him off. Additionally, Bethea testified that one of the employees in attendance at the orientation meeting indicated that he was from Michigan, had belonged to a union there, and, after stating that, proceeded to tell the other employees the good points about a union. According to Bethea, Personnel Manager Fulton tried to talk the employee down.

Employee Gions stated that at the orientation session on the Wednesday morning in question, after the newly hired employees had an opportunity to get acquainted, Personnel Manager Fulton asked if anyone belonged to the Union and if anyone had ever worked for the Union. According to employee Gions, three employees attending the orientation session raised their hands in response to Fulton's questions.³

Gions testified that Personnel Manager Fulton then told a story about a union man who had gone to a person's home where the individual had just come from hunting and had his gun by the door which the individual moved, and upon the union man seeing the gun, he left the individual's home and did not return.⁴

Gions further stated that Personnel Manager Fulton said: "... if the Union comes in that, you know, we won't be able to speak for ourselves; the Union would do it." According to Gions, Personnel Manager Fulton went on to explain: "... if the Union comes in that, oh—the Laurinburg plant had been—was able to build a new part upon their building because they did not have the Union and that some of the other plants, you know, wasn't able to get that because they were unionized."

¹ Counsel for the General Counsel moved at hearing, and I granted the motion, to withdraw par. 8(c) of the complaint.

² Counsel for the General Counsel did not present any evidence with respect to that allegation in par. 8(b) of the complaint, which plead that Fulton interrogated employees regarding their union sentiments on May 27, 1980.

³ Gions could not recall which three employees held up their hands in favor of the Union. Gions testified that no employee at the meeting spoke in favor of the Union or said that the Union was a good thing.

⁴ Employee Gions acknowledged there was some conversation between employee Doug Miller and Personnel Manager Fulton about shot-guns, but she could not recall specifics.

Gions testified that other employees that she could recall being present at this orientation session were Annie Bethea, Libby Oxendine, Winslow Ratliff, Lisa Poole, Elaine Malloy, Doug Miller, and John Dunn.

Personnel Manager Fulton testified that Respondent had a 5-day orientation program for new employees, wherein the morning hours of each day were generally spent in classroom activity and the afternoon hours were spent in the various departments of the plant. Classroom sessions are conducted by Fulton and Plant Manager Dean Doren. The frequency of the orientation sessions depends upon the hiring posture of Respondent. Personnel Manager Fulton stated at least two orientation sessions a month were held during the spring of 1980. Fulton acknowledged that 1 such week of training was held the week of March 17, 1980.

Personnel Manager Fulton testified that he was present and participated in that portion of the week's training which took place in the morning hours of March 19, 1980. Personnel Manager Fulton stated that he opened his portion of the presentation by reading to the employees "Our Employee Relationship Philosophy" set forth on page 3 of Respondent's employee handbook.⁵

Personnel Manager Fulton testified that he did not ask any employees at any time how they felt about the Union or whether they had ever been in a union. He stated that no employee spoke in favor of a union at the session nor did any employee state that he was from Michigan and in favor of a union or that unions were good.

Personnel Manager Fulton testified that employee Elaine Malloy asked a question concerning what to do if union people visited her at her home. Fulton told Malloy and the group, in answer to her question, that their home was their private property and what they did regarding any visitor was their own affair—a decision left to each individual. According to Fulton, employee Doug Miller spoke up in what Fulton perceived to be a joking manner, and stated that he (Miller) would run them off with a shotgun. Fulton replied to Miller, "Well, I've heard of that happening, but I do not recommend it." Fulton denied telling any story or making any comment about a union man going to an individual's home and being run off by that individual with a shotgun.

Personnel Manager Fulton denied making any comment that Respondent's open door policy would be done away with or that employees could not come to management with their problems if the Union came in. Fulton stated he was fully aware of the first Board-conducted election in Case 11-RC-4751 which had been held in October 1979, and the subsequent setting aside of that election based on a comment of Plant Manager Doren to

the effect that, if the Union came in, the employees would have to deal with Respondent through the Union and there would be no more open door policy.

Plant Manager Doren testified that he was present during the time Personnel Manager Fulton made his presentation on Wednesday, March 19, 1980. Doren's testimony corroborated the testimony of Fulton in all essential aspects.

Elaine Malloy testified that she commenced work for Respondent on March 17, 1980, and she attended the orientation session on March 19, 1980, along with employees Annie Bethea, Velois Gions, and others. Malloy testified that Personnel Manager Fulton read from Respondent's handbook its philosophy on unions. According to Malloy, each of those attending the orientation session had a copy of the handbook at the time Fulton was reading from it. Malloy stated that she asked Fulton what she could do if the Union came to her home and harassed or bothered her. Malloy testified that Fulton told her he would leave it to her either to ask them to leave or to call the police. Malloy also testified that employee Doug Miller spoke up and said something about getting a shotgun and running them away. According to Malloy, everyone laughed at Miller's comment. Malloy testified that Fulton responded to Miller's comment by stating he would not advise doing what Miller had suggested.

Malloy testified that Fulton never, at any time, asked any employee if they were in the Union, had been in the Union, or if they favored the Union. Malloy further testified that no employee spoke on the subject of the Union nor did any individual indicate that they were from Michigan, and for, or in favor of, unions. According to Malloy, Fulton did not say anything about the open door policy of Respondent nor did he say that, if the Union came in, the employees could no longer speak for themselves.

Employee Douglas J. Miller testified that he was present at the orientation session on the morning of March 19, 1980.⁶ Miller testified that Fulton read to the new employees at the orientation session about the philosophy and management relationship of Respondent. According to Miller, employee Malloy asked Fulton what could be done if the Union came to her house and harassed her. Miller testified that Fulton responded with the comment, "You can ask them to leave if you don't want them there and if they won't leave, then you can call the law." Miller spoke up at this point in the session and said: "Well, what if I get my shotgun and have them leave?"⁷ According to Miller, Personnel Manager Fulton responded he would not suggest that.

Miller testified that Fulton did not ask any employees how they felt about a union or whether they had ever belonged to a union. Miller also testified that no employee either stood up or held their hand up with respect to whether they had belonged to a union. According to

⁵ "Our Employee Relationship Philosophy" set forth in Respondent's employee handbook touches briefly on a salary concept of pay as opposed to "white collar" and "blue collar" classifications. The philosophy goes on to state that Respondent desires a mutually respectable understanding between Respondent and its employees. It also deals with the question of employees being approached to sign union cards and with individual employee treatment and their relationship with supervisors. There is no allegation of the complaint that there is anything unlawful contained in the printed employee relationship philosophy and, after a careful reading of page 3 of the employee handbook, I conclude that it does not contain any unlawful comments.

⁶ Miller testified that Annie Bethea and Velois Gions were present at this meeting.

⁷ Miller testified that there was no story told by anyone about any union officials going to the home of an individual and that individual showing them a shotgun and having them leave the individual's residence.

Miller, no employee spoke in favor of a union at the session. Miller also stated that no employee indicated that they were from Michigan and thought unions were a good thing.

Miller testified that at no time did Personnel Manager Fulton say anything about Respondent's open door policy nor did he say that the open door policy of Respondent would be withdrawn and employees could not deal with management anymore.

The testimony of Fulton, Doren, Malloy, and Miller was corroborated in all essential aspects by the testimony of employees Libby Oxendine, Winslow Ratliff, William Hawkins, John H. Dunn, and Lisa Poole, all of whom were present at the March 19, 1980, orientation session.

I credit the testimony of Personnel Manager Fulton. Not only did he impress me as a truthful witness, but his testimony was also essentially the same as what is contained in Respondent's employee handbook regarding the employee relationship philosophy of Respondent. All witnesses acknowledged that Fulton read from the handbook. Further, Fulton's testimony is corroborated by that of employees Malloy and Miller, who I also believe told the truth. Fulton, Malloy, and Miller's testimony was corroborated by Doren, Oxendine, Ratliff, Hawkins, Dunn, and Poole.

I specifically discredit the testimony of employee Gions because in my opinion she either misunderstood or was confused with respect to what she thought was said at the orientation meeting on March 19, 1980.⁸ Gions could remember that Miller and Fulton said something about a shotgun, which causes me to conclude that Gions heard what Miller and Fulton testified to was said and apparently misunderstood what was said. I view Gions' testimony that some three employees held up their hands to signify their position on the Union as being suspect in that she could not recall by name any who had held up their hands as being for the Union. I am convinced she could not recall their names because I am persuaded it did not occur.

I also specifically discredit the testimony of Annie V. Bethea. Bethea testified that an employee spoke up at the orientation session stating that they were from Michigan and in favor of the Union. That aspect of her testimony, for example, was not even supported by the other witness (Gions) called by counsel for the General Counsel. Gions testified that no one spoke in favor of the Union. Bethea was not a totally unbiased witness in that she acknowledged her sympathies were with the Union, and that she had been made aware of the fact that the statements attributed to Respondent about its open door policy caused the first election to be set aside.

I therefore recommend that paragraphs 8(a), (b), and (d) of the complaint be dismissed in their entirety.

C. The Alleged Violations Attributed to Assistant Personnel Manager James Stewart

The General Counsel, at paragraphs 8(e) and (f) of the complaint, alleged that Respondent through Stewart, in

early April 1980, interrogated a job applicant respecting the applicant's union sentiments and threatened employees that Respondent had a bright future only if it remained nonunion.

Counsel for the General Counsel relies on the testimony of Kenneth Chastain to establish the violations alleged in the particular subparagraphs indicated.

Chastain applied for a job at Respondent either at the end of March or the beginning of April 1980. Chastain described in detail the procedure he followed in order to make application for employment at Respondent. Chastain testified that he began his application at the guardhouse and was then escorted to a trailer where he was met by "an older" person who actually conducted the interview. Chastain stated that the person who interviewed him introduced himself as Assistant Personnel Manager Stewart. According to Chastain, Stewart read his application and then stated that Respondent had hired a group of 100 people and the reason they were hiring was because people had said no to the Union. Chastain testified that Stewart said the reason Respondent had moved to the South was because the people stood up to the Union and that the future was bright, and hiring would continue as long as Respondent stayed nonunion. According to Chastain, after Stewart finished telling him about the hiring situation at Respondent he asked, "... what were my opinions about the Union, had I been involved with the Union . . . ?" Chastain testified that he told Stewart he had been involved with the Union and that his experience had been a bad one. Chastain told Stewart that the particular plant⁹ where he had worked moved to Korea, Taiwan, or some third world country because of a union.

Assistant Personnel Manager James Stewart testified that he had been in his current position for 8 years and in that capacity interviewed prospective employees for Respondent at its Laurinburg, North Carolina, facility. Stewart testified that it was a known policy of Respondent that the subject matter of unions was not to be discussed with applicants. Stewart testified that he commenced an interview by asking the individual if he was the person whose name appeared on the application. Stewart stated he would then ask the individual to tell him something about himself.

According to Stewart, Chastain told him he had been working for a company called Scripto in Atlanta and that it had gone overseas or something. Stewart testified that Chastain may have said something about a bad experience with a union. Stewart denied ever asking Chastain at any time if he was in the Union or if he favored a union. Further, Stewart denied telling Chastain that Respondent was succeeding only because the employees had voted against the Union. Stewart testified that he did not tell Chastain that Respondent was hiring people because they voted against the Union nor did he say the future of Respondent would be bright as long as people continued to stand up to the Union. Stewart stated the reason he could recall Chastain was that Chastain was a very talkative individual and he had to hurry him along

⁸ I base my belief as to her confusion on, among other factors, her testimony that Fulton did not mention a particular type gun in the story she attributes to him, but she knew it was a shotgun because that is the only thing anyone would go hunting with.

⁹ Chastain indicated on his job application and personally told Stewart that he had worked for Scripto in Atlanta, Georgia.

because he had approximately 40 other applicants to interview on the occasion of Chastain's interview. Stewart stated that the interview lasted approximately 8 to 10 minutes.

On cross-examination, Chastain acknowledged that he had never worked for Scripto in Atlanta, Georgia, nor to his knowledge had Scripto moved overseas to Taiwan or Korea. Chastain testified that he had actually worked in Atlanta for Atlantic Steel which was a unionized operation. Chastain stated that he lied to Stewart about his Atlanta employment and acknowledged: "I told him what he wanted to hear and I was glad I told him that from what he started to say to me." Chastain also acknowledged that he had said on his work application he had worked for Scripto even though in fact he never had. Chastain also acknowledged he had worked as a salaried organizer for the Union for a period of time after the interview with Stewart; however, at the time of the hearing herein he stated he was not on the Union's payroll.

Assistant Personnel Manager Stewart impressed me as an articulate and truthful witness who was also a seasoned personnel officer well trained in procedures for conducting interviews of employee applicants in a lawful manner. I credit Stewart's version of the events regarding the applicant interview of Chastain. I specifically discredit Chastain's testimony to the contrary.¹⁰

I therefore recommend that paragraphs 8(e) and (f) of the complaint be dismissed in their entirety.

IV. OBJECTIONS TO ELECTION

The objections herein (Objections 1-6(a), inclusive) were coextensive with the allegations of the complaint. Inasmuch as I have found no merit to the unfair labor practice allegations, I conclude and find that the specified objections which were based on such alleged misconduct are insufficient grounds to warrant setting aside the second election, which was held on November 5 and 6, 1980. I therefore recommend that the Board not set

¹⁰ The veracity of this witness was greatly diminished by the fact that he would admittedly lie in order to tell someone what he perceived they wanted to hear.

aside the election of November 5 and 6, 1980, in Case 11-RC-4751 based on the allegations raised by Objections 1-6(a), inclusive. The other additional objections to the conduct affecting the results of the election are not before me, and as such I make no recommendation with respect thereto.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent has not committed unfair labor practices within the meaning of Section 8(a)(1) of the Act by threatening employees that, if the plant were unionized, the Union would take away the rights of employees; that unionization would result in layoffs and strikes; that Respondent had a bright future only if it remained non-union; or by interrogating its employees concerning their union membership, activities, or desires.

3. Respondent has engaged in no unfair labor practices violative of the Act.

4. The Union is a labor organization within the meaning of Section 2(5) of the Act.

5. Respondent has not engaged in conduct affecting the results of the second election with respect to Objections 1-6(a), inclusive, in Case 11-RC-4751.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹¹

The complaint in Case 11-CA-9204 is dismissed in its entirety. Objections 1-6(a), inclusive, in Case 11-RC-4751 with respect to the second Board-conducted election are overruled.

¹¹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.